

EXHIBIT C

LESLIE E. DEVANEY
ANITA M. NOONE
LESLIE J. GIRARD
SUSAN M. HEATH
GAEL B. STRACK
ASSISTANT CITY ATTORNEYS

TED BROMFIELD
SENIOR DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

Casey Gwinn
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO, CALIFORNIA 92101-4100
TELEPHONE (619) 533-5800
FAX (619) 533-5856

December 10, 2001

John H. Robertus, Executive Director
Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA. 92123-4340

Dear Mr. Robertus:

*Directive for Groundwater Investigation Report
Pursuant to California Water Code Section 13267
(Belt Street Rupture)*

The City of San Diego is in receipt of your November 13, 2001 letter regarding the above and requesting by January 25, 2002 a preliminary site conceptual model and workplan to conduct a soil and groundwater investigation. This requirement is based solely on a finding that the City is a "discharger" because:

The City of San Diego contracted with AMEC Earth and Environmental to conduct a geotechnical investigation of a proposed sewer line that required the drilling of soil borings in the roadway where the pipeline is located, thereby permitting the release to occur.

Regional Water Quality Control Board letter of November 13, 2001, at page 2.

This finding is factually and legally incorrect and unacceptable to the City of San Diego. It is the City's position that it is not a "discharger" in this action and not subject to the mandates of Water Code section 13267.

The City's position is based on the following uncontroverted evidence:

1. AMEC at the time of the rupture was an independent contractor.

The City contracted with AMEC for geotechnical services on February 4, 2000. Section 8.4 of the contract is attached as Exhibit A and expressly provides that AMEC is an independent contractor and the City exercised no control over the activity of AMEC. It is confirmed California law that a person is not liable for acts of independent contractors. Witkin, *Summary of California Law*, Vol. 2, Agency and Employment § 12 (9th Ed. 1987).

Mr. Robertus

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Moreover, the courts have consistently ruled that a contractual independent contractor clause is determinative, absent specific facts establishing control of activities. See *Kaplan v. Coldwell Banker Residential Affiliates, Inc.*, 59 Cal. App. 4th 741, 746 (1997).

2. The City neither directed nor controlled the location of test borings.
3. No City personnel supervised or were present at the test borings.
4. The City did not regulate any factor which caused or contributed to the discharge. *Lake Madrone Water District v. State Water Resources Control Board*, 209 Cal. App. 3d 163, 174 (1989).
5. The City contends that the Board has improperly failed to assign any liability to Chevron Products Company for the incident. Chevron was engaged in an ultra-hazardous activity, which itself presumes liability. Chevron was in direct violation of state law requiring participation in a regional notification center and registration of their subsurface facility. Gov't Code § 4215 et seq. Furthermore, the extent of the spill and the quantity of hydrocarbon contamination was due to the pressure in the pipe and the lack of an automatic pressure relief device.
6. The November 13, 2001 letter fails to establish that the burden of providing the requested reports bears a reasonable relationship to the need for the reports and the benefits of same.

It is the City's understanding that AMEC is separately requesting a hearing on the findings and requirements of the November 13, 2001 letter. Accordingly, the City respectfully requests a hearing and a final administrative decision or order in conjunction with AMEC and any parties similarly requesting review.

Sincerely yours,

CASEY GWINN, City Attorney

By


Ted Bromfield
Senior Deputy City Attorney

TB:mb

Attachment: 1

Exhibit A

cc: Barry S. Pulver
John H. Dillard